UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

FragranceNet.com, Inc.,

Plaintiff,

- against -

FragranceX.com Inc. and John Does 1-20

Defendant.

CV 06 2225 (JFB) (AKT)

AFFIDAVIT OF REBECCA MYERS IN SUPPORT OF FRAGRANCENET'S MOTION FOR LEAVE TO FILE ITS THIRD AMENDED COMPLAINT

STATE OF NEW YORK)
ss:
COUNTY OF NEW YORK)

REBECCA MYERS, being duly sworn, deposes and says:

1. I am an associate in the law firm of Paul, Hastings, Janofsky & Walker LLP, attorneys for Plaintiff FragranceNet.com, Inc. and submit this affidavit in support of Plaintiff's motion for leave to file its Third Amended Complaint, a copy of which is annexed hereto as Exhibit A.

2. Annexed hereto as Exhibit B is a true and correct copy of a letter from Rebecca Myers to David Rabinowitz dated March 14, 2007 requesting defendant's consent to FragranceNet's filing its Third Amended Complaint without seeking leave of the Court.

3. Annexed hereto as Exhibit C is a true and correct copy of a letter from David Rabinowitz to Rebecca Myers dated March 16, 2007 stating that defendant will not consent to FragranceNet's filing its Third Amended Complaint.

4. Thereafter, the parties requested a pre-motion conference and FragranceNet made

Dockets.Justia.com

some revisions to its proposed amended complaint based on its counsel's further investigation.

5. The parties jointly requested that the pre-motion conference be adjourned so that defendant could consider whether it wished to oppose the filing of the proposed Third Amended Complaint. Annexed hereto as Exhibit D is a true and correct copy of a letter from David Rabinowitz to Hon. Joseph F. Bianco dated March 18, 2007 requesting an adjournment to April 25, 2007.

6. Defendant maintained its refusal to consent to FragranceNet's filing of the proposed Third Amended Complaint. A pre-motion conference was held on April 25, 2007, at which time a briefing schedule was set.

Rebecca Myers
Rebecca Myers

Sworn to before me this
4th day of May, 2007

Notary Public

FRANK NUNZIO DAGOSTINO
NOTARY PUBLIC, State of New York
No. 01DA4996102
Qualified in New York County
Commission Expires May 11, 2010

CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of this Court, hereby certifies that she has caused to be served via overnight mail a true and correct copy of the foregoing AFFIDAVIT OF REBECCA MYERS IN SUPPORT OF FRAGRANCENET'S MOTION FOR LEAVE TO FILE ITS THIRD AMENDED COMPLAINT on this 4th day of May, 2007, on the following counsel of record:

David Rabinowitz, Esq.
Moses & Singer LLP
405 Lexington Avenue
New York, New York 10174-1299

The above is the address designated by said attorneys for service.

Rebecca K. Myers